

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**IN RE: AUTOMOTIVE PARTS ANTITRUST
LITIGATION**

**No. 12-md-02311
Hon. Sean F. Cox**

IN RE: AUTOMOTIVE WIRE HARNESSSES	CASE NO. 2:12-CV-00102
IN RE: INSTRUMENT PANEL CLUSTERS	CASE NO. 2:12-CV-00202
IN RE: FUEL SENDERS	CASE NO. 2:12-CV-00302
IN RE: HEATER CONTROL PANELS	CASE NO. 2:12-CV-00402
IN RE: BEARINGS	CASE NO. 2:12-CV-00502
IN RE: OCCUPANT SAFETY SYSTEMS	CASE NO. 2:12-CV-00602
IN RE: ALTERNATORS	CASE NO. 2:13-CV-00702
IN RE: ANTI-VIBRATION RUBBER PARTS	CASE NO. 2:13-CV-00802
IN RE: WINDSHIELD WIPERS	CASE NO. 2:13-CV-00902
IN RE: RADIATORS	CASE NO. 2:13-CV-01002
IN RE: STARTERS	CASE NO. 2:13-CV-01102
IN RE: AUTOMOTIVE LAMPS	CASE NO. 2:13-CV-01202
IN RE: SWITCHES	CASE NO. 2:13-CV-01302
IN RE: IGNITION COILS	CASE NO. 2:13-CV-01402
IN RE: MOTOR GENERATORS	CASE NO. 2:13-CV-01502
IN RE: STEERING ANGLE SENSORS	CASE NO. 2:13-CV-01602
IN RE: HID BALLASTS	CASE NO. 2:13-CV-01702
IN RE: INVERTERS	CASE NO. 2:13-CV-01802
IN RE: ELECTRONIC POWERED STEERING ASSEMBLIES	CASE NO. 2:13-CV-01902
IN RE: AIR FLOW METERS	CASE NO. 2:13-CV-02002
IN RE: FAN MOTORS	CASE NO. 2:13-CV-02102
IN RE: FUEL INJECTION SYSTEMS	CASE NO. 2:13-CV-02202
IN RE: POWER WINDOW MOTORS	CASE NO. 2:13-CV-02302
IN RE: AUTOMATIC TRANSMISSION FLUID WARMERS	CASE NO. 2:13-CV-02402
IN RE: VALVE TIMING CONTROL DEVICES	CASE NO. 2:13-CV-02502
IN RE: ELECTRONIC THROTTLE BODIES	CASE NO. 2:13-CV-02602
IN RE: AIR CONDITIONING SYSTEMS	CASE NO. 2:13-CV-02702
IN RE: WINDSHIELD WASHERS	CASE NO. 2:13-CV-02802
IN RE: CONSTANT VELOCITY JOINT BOOTS	CASE NO. 2:14-CV-02902
IN RE: SPARK PLUGS	CASE NO. 2:15-CV-03002
IN RE: AUTOMOTIVE HOSES	CASE NO. 2:15-CV-03202
IN RE: SHOCK ABSORBERS	CASE NO. 2:16-CV-03302
IN RE: BODY SEALING PRODUCTS	CASE NO. 2:16-CV-03402
IN RE: INTERIOR TRIM PRODUCTS	CASE NO. 2:16-CV-03502
IN RE: BRAKE HOSES	CASE NO. 2:16-CV-03602
IN RE: EXHAUST SYSTEMS	CASE NO. 2:16-CV-03702

IN RE: CERAMIC SUBSTRATES	CASE NO. 2:16-CV-03802
IN RE: POWER WINDOW SWITCHES	CASE NO. 2:16-CV-03902
IN RE: AUTOMOTIVE STEEL TUBES	CASE NO. 2:16-CV-04002
IN RE: ACCESS MECHANISMS	CASE NO. 2:16-CV-04102
IN RE: MINIMODULES	CASE NO. 2:17-CV-04302
IN RE: SIDE DOOR LATCHES	CASE NO. 2:17-CV-13005

THIS DOCUMENT RELATES TO:
Automobile Dealership Actions

**DECLARATION OF EMMA K. BURTON IN SUPPORT OF CERTAIN AUTOMOBILE
DEALERSHIP SETTLEMENT CLASS MEMBERS' MOTION TO ENFORCE PLANS
OF ALLOCATION WITH REGARD TO RESERVE FUND ELIGIBILITY**

I, Emma K. Burton, declare as follows.

1. I am an attorney at Crowell & Moring LLP and am counsel for the Automobile Dealership Settlement Class members Wolfe Automotive Group, Kings Nissan and Kings Infiniti, Inc., and Young Automotive Group LLC (“Dealership Members”) who move this Court to enforce the Plans of Allocation with regard to reserve fund eligibility in the class action settlements known as *In re: Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.) (“Dealership Settlements”). Through my representation of the Dealership Members, I have information relating to their claims to the Dealership Settlements, and all of the statements in this Declaration are, unless otherwise indicated, based upon information and belief.

2. During the relevant time period under the Dealership Settlements, Dealership Members together purchased over 350,000 new vehicles containing component parts manufactured and price fixed by Defendants to the Dealership Settlements, and incurred significant overcharges as a result of Defendants’ illegal conduct.

3. Upon learning of its eligibility to participate in the Dealership Settlements, Wolfe Automotive Group (Claim ID AZ3-40000406-2) filed a timely Proof of Claim to the Dealership Settlements on January 19, 2019, prior to the January 21, 2019, claim filing deadline for the third round of settlements. Wolfe’s claim to settlements grouped in Round 3 included vehicles purchased by 21 dealerships: Acura of Cleveland, Jay Wolfe Acura of Kansas City, Jay Wolfe Acura of Springfield, Jay Wolfe Chevrolet, Jay Wolfe Chrysler Plymouth Jeep Eagle, Jay Wolfe Daewoo, Jay Wolfe Dodge, Jay Wolfe Ford, Jay Wolfe Honda of Kansas City, Jay Wolfe Imports of Springfield, Jay Wolfe Kia, Jay Wolfe Mercedes Benz, Jay Wolfe Nissan, Jay Wolfe Toyota Scion of Kansas City, Jay Wolfe Toyota Scion of West County, Jay Wolfe Volkswagen, Saturn of Blue Springs, Saturn Of Glenview/Chicago, Saturn of Kansas City, Saturn of Olathe,

and Saturn of Tiffany Springs. Wolfe's claim to the third round of settlements was validated by the claims administrator and initial distribution checks from the third round of settlements were issued to Wolfe on January 22, 2020, and April 27, 2020.

4. Upon learning of its eligibility to participate in the Dealership Settlements, Kings Nissan and Kings Infiniti, Inc. (Claim ID AZ3-40000351-1) filed a timely Proof of Claim to the Dealership Settlements on January 19, 2019, prior to the January 21, 2019, claim filing deadline for the third round of settlements. Kings' claim to settlements grouped in Round 3 included vehicles purchased by two dealerships: Kings Nissan and Kings Infiniti. Kings' claim to the third round of settlements was validated by the claims administrator and an initial distribution check from the third round of settlements was issued to Kings on April 27, 2020.

5. Upon learning of its eligibility to participate in the Dealership Settlements, Young Automotive Group LLC (Claim ID AZ3-40000350-3) filed a timely Proof of Claim to the Dealership Settlements on January 17, 2019, prior to the January 21, 2019, claim filing deadline for the third round of settlements. Young's claim to settlements grouped in Round 3 included vehicles purchased by 12 dealerships: Bonanza Motors, Young Auto Mall, Young Buick GMC – Burley, Young Buick GMC – Layton, Young Chevrolet, Young Chrysler Jeep Dodge Ram Fiat – Burley, Young Chrysler Jeep Dodge Ram – Morgan, Young Ford of Brigham City, Young Ford – Morgan, Young Kia, Young Mazda and Young Subaru. Young's claim to the third round of settlements was validated by the claims administrator and an initial distribution check from the third round of settlements was issued to Young on April 27, 2020.

6. Because the individual dealership settlements were treated as part of the larger, overall group of settlements with Defendants, class members submitting claims early in the process were able to "rely on that Proof of Claim and do nothing further to participate" in future

settlements with additional defendants. *See* Automobile Dealership Online Claim Form available at <https://kccsecure.com/autodealersettlement/Claimant/Register>. Accordingly, claims submitted in earlier rounds of settlements were automatically processed in subsequent rounds, as well. Notwithstanding, Wolfe, Kings, and Young each filed timely claims to the fourth and final round of settlements, including vehicles purchased in the expanded time frame for the Round 4 settlements.

7. Wolfe, Kings, and Young are class members to *all* of the Dealership Settlements, including those settlements grouped together in the first and second rounds. Together, their qualifying vehicle purchases during the time frame in the first round of settlements exceed 235,000, and more than 275,000 vehicles purchased during the relevant time period for settlements in the second round.

8. While initial distribution in the fourth and final round of settlements has not yet occurred, in a June 8, 2020, filing with the Court, class counsel nonetheless represented that they are “nearly ready to distribute the settlements funds held in reserve” for the first three rounds. Auto Dealers’ Mem. ISO Mot. to Award Fees Placed in Reserve in 2016 for Round Two Settlements at 5, ECF No. 584.

9. Anticipating that calculation and disbursement of funds held in reserve from any settlement must await final distribution in the fourth and final round of settlements, I contacted class counsel and the claims administrator by email on June 22, 2020, to request an opportunity to discuss reserve fund distribution. I met by phone with claims administrator Scott DiCarlo, Senior Project Manager, KCC LLC, on July 6, 2020, to confirm eligibility to reserve funds from all Dealership Settlements by all Dealership Settlement class members who filed a valid Proof of Claim, regardless of round for initial claim filing. Mr. DiCarlo noted that final amounts for

reserve fund distribution had not been determined at that time and no timeline had been set for reserve fund distribution. Mr. DiCarlo commented during our call that my inquiry regarding eligibility to reserve funds raised “a good question” and offered to take the issue back to class counsel for further discussion. Mr. DiCarlo also noted the efficiencies inherent in distributing reserve funds in one check to each identified class member, rather than individual checks per round.

10. I received a letter by email from class counsel Jonathan Cuneo on July 10, 2020, outlining the position that class counsel now takes with respect to reserve fund eligibility—namely, that reserve funds would be distributed separately by round and only to those class members who filed valid claims by the claim filing deadline in each round. A true and correct copy of Mr. Cuneo’s letter is attached hereto as **Exhibit A**. Mr. Cuneo represented in the same letter that class counsel would not distribute any reserve funds prior to July 31, 2020, to afford an opportunity to raise this issue with the Court.

11. I requested an opportunity to meet with class counsel following receipt of Mr. Cuneo’s letter and spoke by phone with Mr. Cuneo and Jennifer Kelly on July 15, 2020, in an effort to resolve the issue but we were unable to reach immediate agreement. Class counsel offered to take the issue back for further discussion. Class counsel responded on July 16, 2020, that their position was unchanged and I advised on July 17, 2020, that Dealership Members would be filing a motion to address reserve fund eligibility by July 31, 2020.

12. Class counsel waited until July 22, 2020, to advise by email that they would move forward with reserve fund distribution as soon as possible after July 31, 2020, unless an order was in place by that date to delay distribution, thus necessitating the Emergency Motion to Delay Distribution of Reserve Funds filed with the Court on July 23, 2020 (ECF No. 587). A true and

correct copy of my email correspondence with class counsel from July 15 to July 22, 2020 is attached hereto as **Exhibit B**.

13. Crowell & Moring also represents other Settlement Class members, including one of the largest claimants, AutoNation (Claim ID AUTO1-70001036-0). AutoNation agrees with the Dealership Members' position that all eligible vehicles should count for calculation of reserve fund distribution, regardless of the round in which they were claimed.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of July, 2020, in Washington, DC.

By: */s/ Emma K. Burton*
Emma K. Burton

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2020, a copy of the foregoing was filed electronically using the Court's ECF system, which will send notification to each attorney of record by electronic means. Parties may access this filing through the Court's system.

July 31, 2020

Respectfully submitted,

By: /s/ Jared A. Levine

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